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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re FELIX G., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

FELIX G.,

Defendant and Appellant.

E034980

(Super.Ct.No. J103941)

OPINION

APPEAL from the Superior Court of Riverside County. Jean P. Leonard, Judge.
Affirmed.

Anna M. Jauregui, under appointment by the Court of Appeal, for Defendant and
Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney
General, Gary W. Schons, Senior Assistant Attorney General, Rhonda L. Cartwright-

Ladendorf, Supervising Deputy Attorney General, and Annie Featherman Fraser, Deputy Attorney General, for Plaintiff and Respondent.

Felix G. admitted the allegation in a Welfare and Institutions Code section 777¹ petition that he had violated his probation in a section 602 proceeding by getting into a fight at his residential placement. As a result of that admission, the trial court, among other things, ordered Felix placed at Desert Youth Academy (DYA). For various reasons, recounted below, DYA found Felix unsuitable and, therefore, declined the placement. All parties stipulated that the failed DYA placement constituted a change of circumstance within the meaning of section 778 that warranted a hearing to modify the placement order. At that hearing, the trial court ordered Felix placed in the California Youth Authority (CYA).

In this appeal, Felix contends that the CYA is a more restrictive placement than DYA and a more restrictive placement must be based on a probation violation as alleged in a section 777 petition. Felix contends the trial court lacked jurisdiction to place him in the CYA because a section 777 petition was not filed before the trial court made that order. We disagree.

¹ All further statutory references will be to the Welfare and Institutions Code unless otherwise indicated.

DISCUSSION

According to the allegations of the section 777 petition at issue in this appeal, on September 26, 2003, Felix got into an altercation at Twin Pines Ranch and thereby violated the condition of his section 602 wardship probation that required him to adjust to the reasonable rules, conditions, and directives of his court ordered placement at that facility. Because Felix had twice failed to conform to the rules at Twin Pines Ranch, the trial court's disposition order on the September 26, 2003, violation directed that Felix be placed at DYA. After DYA found that Felix was not suitable for placement at that facility, the parties stipulated that the failed placement constituted a change of circumstance within the meaning of section 778.

Section 778 states in pertinent part that, "Any parent or other person having an interest in a child who is a ward of the juvenile court or the child himself through a properly appointed guardian may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a ward of the juvenile court for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court."

The alleged changed circumstance in this case, as previously noted, was that DYA would not accept Felix for placement at that facility. As a result, the trial court's placement order in the section 777 disposition could not be carried out and a modification of that order was necessary. Consequently, the trial court modified the placement order on the September 26, 2003, probation violation by ordering Felix placed at the CYA for a period not to exceed four years eight months.

Felix contends, as previously noted, that the CYA commitment order is invalid because such an order must be based on a probation violation as alleged in a petition filed under section 777. Contrary to Felix's view, the trial court's order committing him to the CYA in this case is based on a probation violation, namely the one that occurred on September 26, 2003, when Felix got into an altercation at Twin Pines Ranch, as alleged in the section 777 petition filed on September 29, 2003. Because the order placing Felix at CYA is based on a probation violation and was made at a hearing about which Felix received notice and at which he had an opportunity to be heard, we can only construe Felix's argument to mean that when a placement order included in a disposition on a section 777 petition cannot be carried out because the minor is found not suitable, either a new section 777 petition alleging the probation violation must be filed in order to modify the placement order, or the placement order cannot be modified.

The first interpretation of Felix's claim involves a matter of procedure and would impose the meaningless obligation of refiling the same section 777 petition for the sole purpose of enabling the trial court to revise the placement order. The second interpretation would preclude the trial court from making a new placement order with the result that Felix would remain in juvenile hall until either he committed another probation violation and a new section 777 petition could then be filed, or until he turned 18 and the wardship terminated. Neither interpretation promotes any obviously beneficial procedural or substantive objective.

We conclude that when, as in this case, a placement order included in the disposition following a hearing on a section 777 petition cannot be carried out because

the minor is not suitable for placement at the designated facility, the trial court may modify that placement order after a hearing on a petition filed under section 778.

Inability to carry out the placement order because the minor is not suitable is a change of circumstance within the meaning of that section.

To the extent Felix challenges the trial court's decision to place him in the CYA, we must also reject that claim. "The juvenile court's decision to commit a minor to the CYA will be reversed only when an abuse of discretion has been shown. [Citation.] The evidence, however, must demonstrate probable benefit to the minor from commitment to the CYA and that less restrictive alternatives would be ineffective or inappropriate. [Citation.]" (*In re George M.* (1993) 14 Cal.App.4th 376, 379.)

The record supports the trial court's decision to commit Felix to the CYA. According to the pertinent probation report, Felix initially was placed at Twin Pines Ranch on August 6, 2003. On August 17, Felix ran away from that placement but was again accepted at that facility on September 10, 2003. Felix was removed from Twin Pines Ranch on September 16 after getting into a fight with another resident. On September 30, 2003, the trial court ordered Felix placed at DYA but on October 17, 2003, DYA found Felix not suitable for placement because: "He does not have a significant history of placement failures or removals, he will turn 18 years old on 1/7/04, and . . . DYA has a 6 month waiting list which means [Felix] will not have enough time to complete a 10 month placement before he turns 19 years of age. Additionally, [Felix] was very disrespectful during the screening and appeared very gang oriented."

The trial court, in making the CYA commitment order, stated, among other things, that she had read and considered the various probation reports, including the one quoted above; that according to the CYA screening consultant, there are appropriate services for Felix at the CYA, including treatment and anger management courses, “which he needs desperately.”² The court also noted, “Housing [Felix] in our Juvenile Hall until he turns 18 seems terribly inappropriate and will give him absolutely nothing and no skills to live the kind of life that Felix deserves. He deserves a good life and we are obligated to do what we can to help him in that regard.”

The foregoing evidence demonstrates a probable benefit to Felix from the CYA commitment and that less restrictive alternatives would be ineffective.

DISPOSITION

The judgment is affirmed.

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/s/ McKinster
Acting P.J.

We concur:

/s/ Ward
J.

/s/ Gaut
J.

² Felix threw an electric fan at his father in May 2003, which is the incident that prompted the filing of the subsequent section 602 petition and resulted in Felix being placed at Twin Pines Ranch.